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## FISCAL IMPACT REPORT



SPONSOR: Sanchez DATE TYPED: 02/06/02 HB 144/aHCPAC

SHORT TITLE: Twelve-Hour Hold Following Arrest SB \_\_\_\_\_

ANALYST: Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	\$100.0		\$574.0 Indeterminate – See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	FY03			
	\$100.0		Recurring	New Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Attorney General's Office (AG)  
 Administrative Office of the District Attorneys (ADA)  
 LFC files

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee Amendment lowers the appropriation from \$1,000.0 to \$100.0 and gives it to the Second Judicial District Attorney's Office instead of the First Judicial District Attorney's Office.

Synopsis of Original Bill

House Bill 144 appropriates \$1,000.0 from the general fund to the First Judicial District Attorney's Office for the purpose of domestic violence education, victim protection and offender treatment.

House Bill 144 would require offenders to be held for at least twelve hours after arrest for domestic violence.

House Bill 144 mandates that the DA use the money to expand a coordinated community program for domestic violence. In addition to administering funds, the DA's office would track the efficacy of various treatment programs for batterers. The DA's office would examine quantitative measures, qualitative measures and recidivism rates for treatment programs. The DA's office would initially pilot the program in the First Judicial District and subsequently expand the program via RFPs to other districts that use the coordinated community program model.

Significant Issues

The twelve-hour hold period would allow the victims of domestic violence to seek alternative shelter.

The PDD states that holding domestic violence arrestees and protective order violators for up to 12 hours before a bail hearing violates due process, equal protection, and the Rules of Criminal Procedure.

**FISCAL IMPLICATIONS**

The appropriation of \$1,000.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY2003 shall not revert to the general fund. The \$1,000.0 is appropriated to the newly created domestic violence education victim protection and offender treatment fund.

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

The PDD opposes having the prosecuting attorneys in the First Judicial District administer the domestic violence fund: this may lead to an unfair distribution of funds. For example, the district attorneys office may allocate little money for offender treatment, and most of the money for victim protection. Or, the First Judicial District may not allocate money evenly to other judicial districts around the state. Furthermore the PDD says that the prosecutors in the First Judicial District should not have the discretion to decide where the funds are allocated.

The PDD also notes that they will have to contest the incarceration policy and will be compelled to dedicate significant time and assets until the issue is resolved. This will undoubtedly involve both present staff and contract counsel throughout the state who will have to preserve the issue for appeal. The cost estimates of \$574.0 include at least one appellate attorney, six attorneys to represent at initial appearance arraignments around the state and contract counsel costs.

The AOC notes that there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or, alternatively, avoided by the Act.

The AG states HB 144 bill creates a new area for criminal appeals that could increase the number of appeals taken by criminal defendants. An increase in appeals taken would have an impact on workload for the AG's Criminal Appeals Division. The extent of the impact is too speculative to estimate at this time. If additional staffing were required, the agency would not be in a position to absorb the costs. The detention portion of the bill would also likely have a fiscal impact on county correctional facilities

The ADA writes that HB 144 will create a need for a supervisory position, a victim relations coordinator, a probation position to monitor the offenders, and an administrative support position in the First Judicial District Attorney's Office and that the appropriation contained in HB 144 is sufficient to cover these costs.

### **ADMINISTRATIVE IMPLICATIONS**

The PDD says that HB 144 presents a possible problem with PDD representation. Public Defenders will have an obligation to respond immediately with a request for a bond hearing in the circumstances outlined by the bill. Although proponents may insist the 12 hours is only a "cooling off" period that benefits the injured spouse, HB 144 automatically assumes the accused is "guilty." This legal conclusion is not only a violation of constitutional rights, but invites abuse. If a household member is unjustly accused (a common occurrence in domestic disputes) the 12 hour incarceration is an intrusion upon those freedoms upon which our system is based. Clearly, the Public Defender is morally and statutorily obligated to respond to requests from clients that insist the accusation is false. Delay is not a suitable option as the "punishment" is inflicted immediately. There is no remedy save an immediate hearing that will require additional staff

The ADA notes that additional duties stemming from this program within the First Judicial District Attorney's office will demand more work from current staff and an increase in the resources used by the office. The allocation given in the bill will help meet these increased costs.

### **TECHNICAL ISSUES**

The ADA notes that Section 2, Section C in HB 144 states that the First Judicial Court may contract for the provision of the programs contemplated by the bill. The District Attorney's office is actually in charge of running the programs, so allowing the Court to contract for the services would not be helpful. The ADA recommends replacing "court" on page 2, line 24 with "district attorney's office".

DW/ar:njw